

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

ANTHONY J. DONATO,

Petitioner,

v.

ORDER

Civil File No. 13-3367 (MJD/JJG)

DENESE WILSON, Warden,

Respondent.

Anthony J. Donato, pro se.

David W. Fuller and Gregory G. Brooker, Assistant United States Attorneys,
Counsel for Respondent.

The above-entitled matter comes before the Court on Petitioner's objections to Magistrate Judge Jeanne J. Graham's February 10, 2014 Order [Docket No. 9] denying Petitioner's Motion to Alter or Amend an Order Pursuant to Fed. R. Civ. P. 59(e) [Docket No. 7].

This Court will reverse a magistrate judge's order on a nondispositive issue if it is clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1)(A); D. Minn. L.R. 72.2(a). The Court has reviewed the submissions and the record in

this case and concludes that Magistrate Judge Graham's February 10, 2014 Order is neither clearly erroneous nor contrary to law. Therefore, the Order is affirmed.

In his objection, Petitioner raises Elwood v. Jeter, 386 F.3d 842 (8th Cir. 2004), to support his claim that the BOP violated § 3621(b). The Court will explain why Elwood does not apply. Eighth Circuit case law and other decisions from this district establish that habeas relief is limited to issues affecting the length or duration of a sentence, not the place or conditions of confinement. See, e.g., Kruger v. Erickson, 77 F.3d 1071, 1073 (8th Cir. 1996). While Petitioner relies on the Eighth Circuit's holding in Elwood, which held that challenges to the execution of a sentence can be raised under § 2241, that case has been narrowly construed and applied only to identical claims involving challenges to the Bureau of Prisons' Community Correction Center or home confinement policies. See; see, e.g., Knish v. Stine, 347 F. Supp. 2d 682, 686 (D. Minn. 2004). The Court finds that Petitioner's claim regarding designation of the place of his imprisonment falls squarely within the rule from Kruger, and is not properly raised in a habeas petition. Therefore, Magistrate Judge Graham's Order is neither clearly erroneous nor contrary to law.

Accordingly, based upon the files, records, and proceedings herein, **IT IS**

HEREBY ORDERED:

1. United States Magistrate Judge Graham's February 10, 2014 Order [Docket No. 9] is **AFFIRMED**.
2. Petitioner's objections to that Order [Docket No. 11] are **OVERRULED**.

Dated: April 30, 2014

s/ Michael J. Davis

Michael J. Davis

Chief Judge

United States District Court